

Hearing Date: November 15, 2018
Time: 10:00 a.m.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,)	Case No. 18-23538 (RDD)
)	(Jointly Administered)
Debtors. ¹)	

**RESPONSE AND RESERVATION OF RIGHTS OF WILMINGTON TRUST,
NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE AND COLLATERAL AGENT
WITH RESPECT TO DEBTORS' MOTION FOR AUTHORITY TO (A) OBTAIN
POSTPETITION FINANCING, (B) USE CASH COLLATERAL, (C) GRANT
CERTAIN PROTECTIONS TO PREPETITION SECURED PARTIES, AND
(D) SCHEDULE SECOND INTERIM HEARING AND FINAL HEARING**

Wilmington Trust, National Association, as indenture trustee and collateral agent

("Wilmington Trust") for the 6-5/8% Senior Secured Notes due 2018 (the "2010 Notes") issued by

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365) (collectively, the "Debtors"). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Sears Holdings Corporation (“Sears”), by its undersigned attorneys, files this Response and Reservation of Rights of Wilmington Trust, National Association, as Indenture Trustee and Collateral Agent With Respect to the Debtors’ Motion for Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Certain Protections to Prepetition Secured Parties, and (D) Schedule Second Interim Hearing and Final Hearing, and in support thereof states as follows:

BACKGROUND

The 2010 Notes

1. Pursuant to an indenture dated as of October 12, 2010 (as amended from time to time, the “2010 Indenture”) between Sears, the Guarantors Party thereto and Wells Fargo Bank, National Association (“Wells Fargo”), as trustee and collateral agent, Sears issued the 2010 Notes.

2. Pursuant to an Instrument of Resignation, Appointment, and Acceptance dated as of June 25, 2014 by and among Sears, Wilmington Trust and Wells Fargo, Wilmington Trust became the successor indenture trustee and collateral agent with respect to the 2010 Notes.

3. Pursuant to the Amended and Restated Security Agreement dated as of March 20, 2018 among Sears and Wilmington Trust (the “Security Agreement”), Wilmington Trust, as collateral agent, holds a security interest in the Collateral (as defined in the Security Agreement) to secure repayment of the 2010 Notes.

The Bankruptcy Filing

4. On October 15, 2018, each of the Debtors filed voluntary petitions for relief under Chapter 11 of title 11, U.S.C. in the United States Bankruptcy Court for the Southern District of New York, (the “Bankruptcy Court”).

The DIP Financing

5. Also on October 15, 2018, the Debtors filed the Debtors' Motion for Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Certain Protections to Prepetition Secured Parties, and (D) Schedule Second Interim Hearing and Final Hearing (the "Motion") (Dkt. No. 7), pursuant to which the Debtors sought to use cash collateral and obtain debtor-in-possession financing from the Prepetition First Lien Lenders (as defined in the Motion) on the terms set forth in the Motion (the "Senior DIP Loan").

6. On October 16, 2018, the Bankruptcy Court entered the Interim Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief (the "Interim Order") (Dkt. No. 101).

7. The Motion also sought approval for the Debtors to obtain a "Junior DIP Loan" from certain affiliates of the Debtors (the "Junior DIP Lenders"), but the Debtors have yet to proceed with a hearing with respect to the Junior DIP Loan.

The Senior DIP Loan

8. Wilmington Trust has no objection to entry of a Final Order authorizing the Debtors to use cash collateral and obtain the Senior DIP Loan from the Prepetition First Lien Lenders, and the terms thereof, as contemplated by the Motion, substantially on the terms of the Interim Order, with such changes thereto as are necessary or appropriate to finally approve the Debtors' use of cash collateral and the Senior DIP Loan as provided in the Motion.

Reservation of Rights With Respect to the Junior DIP Loan

9. Wilmington Trust has been advised by the Debtors that the terms of any Junior DIP Loan remain to be determined.

10. Moreover, the Motion fails to provide any basis on which the Debtors require a Junior DIP Loan. Although Mohsin Y. Meghji, the Debtors' Chief Restructuring Officer, states in footnote 3 on page 6 of the Declaration of Mohsin Y. Meghji in Support of Debtors' Motion for Authority to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Certain Protections to Prepetition Secured Parties and (D) Schedule Second Interim Hearing and Final Hearing (Dkt. No. 10) that "The Debtors intend to file a supplemental declaration in support of the Junior DIP Financing," the Debtors have yet to file any such supplemental declaration.

11. Accordingly, Wilmington Trust reserves all rights to file any response to the Debtors request for approval of Junior DIP Financing once the Debtors provide notice of the actual terms of such proposed Junior DIP Financing and make a *prima facie* showing pursuant to 11 U.S.C. § 364 that they have a need for such financing.

Dated: New York, New York
November 8, 2018

SEYFARTH SHAW LLP

By: /s/ Edward M. Fox

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